

## REMARKS/ARGUMENTS

### **I. Introduction**

This amendment is submitted in response to the Office Action dated September 7, 2006. A one month extension of time is hereby requested. Accordingly, the deadline for responding is being extended by a request for a one month extension of time to January 7, 2007.

Claims 10-16 are canceled. Claims 1, 2, 7, and 8 have been previously canceled. Accordingly, Claims 3-6, 9 and 17-23 are now pending.

Claims 9, 14, 16, 18, and 19 stand objected to for informalities. Claims 9, 18, and 19 have been amended to correct these informalities, as suggested by the Examiner.

Claims 3, 17, and 19-23 are allowed. Applicant thanks the Examiner for these allowances.

Claims 4, 5, 10, 11, 12, 14, and 18 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,914,936 to Hatono et al. (hereinafter “the Hatono et al. patent”). Claim 9 stands rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,901,140 to Van As et al. (hereinafter “the Van As et al. patent”). Claim 13 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the Hatono et al. patent in view of U.S. Patent No. 6,657,961 B1 to Lauffenburger et al. (hereinafter “the Lauffenburger et al. patent”). Claims 6 and 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the Hatono et al. patent in view of U.S. Patent No. 6,208,653 B1 to Ogawa et al. (hereinafter “the Ogawa et al. patent”). Claim 16 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the Hatono et al. patent in view of U.S. Patent No. 6,424,620 B1 to Nishihara (hereinafter “the Nishihara patent”).

Applicant will now address and overcome each of the Examiner's rejections of a non-canceled claim.

**II. Claims 4, 5, 6, and 18 are Patentable**

Claims 4, 5, 10, 11, 12, 14, and 18 stand rejected under 35 U.S.C. 102(b) as being anticipated by the Hatono et al. patent.

Claims 10, 11, 12, and 14 are canceled.

Claim 4 has been amended to include the feature:

*"wherein said step of identifying a node in said path includes the step of transmitting a signal to said destination device requesting path information"*

As the Examiner states on p. 11 of the Office Action that this feature distinguishes claim 3 from the cited art, it thereby also distinguishes claim 4, as amended, from the cited art.

For at least this reason, claim 4, as amended, is patentable over the cited art.

Claims 5 and 6, as being dependent on allowable claim 4, are therefore also patentable over the cited art.

Claim 18 has likewise been amended to include the feature:

*"wherein said step of determining the path includes the step of transmitting a signal to said destination device requesting path information"*

For at least this reason, claim 18, as amended, is patentable over the cited art.

**III. Claim 9 is patentable**

Claim 9 stands rejected under 35 U.S.C. 102(b) as being anticipated by the Van As et al. patent. The Examiner states on p. 7 of the Office Action:

“Operating the first node to perform a forced reduction (hold back all cells flowing via the bottleneck link 5) in the flow rate of at least one packet flow in response to detecting traffic congestion as a function of a base line flow rate [emphasis added] for traffic flowing through the first node (col. 3, lines 47-49, 54-60, col. 4, lines 29-39).

However, not only do the cited passages not teach or suggest detecting traffic congestion as a function of a base line flow rate, at col. 3, lines 47-49 it states: “If the incoming rate of cells is larger than the link transmission rate, a bottleneck exists at this link.” Rather than teaching a comparison between the actual rate and a base line flow rate, the reference teaches away from this feature of claim 9 by disclosing an analysis of a rate which equals or exceeds the capacity of the link. There is no need (nor is there a way to incorporate) to view a historical or expected flow rate to determine congestion, but simply a determination that the capacity of the link has been hit.

As claim 9 states:

*“in response to detecting traffic congestion as a function of a base line flow rate for traffic flowing through the first node”*

Because this feature of claim 9 is not taught or suggested in the cited art, claim 9 is patentable over that art.

For at least this reason, claim 9, as amended, is patentable over the cited art.

## VI. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully submit that the pending claims are in condition for allowance. Accordingly, Applicants request that the Examiner pass this application to issue.

If there are any outstanding issues which need to be resolved to place the application in condition for allowance the Examiner is invited to contact Applicants' undersigned representative by phone to discuss and hopefully resolve said issues. To the extent necessary, a petition for extension of time under 37 C.F.R. 1.136 is

hereby made and any required fee is authorized to be charged to the deposit account of Straub & Pokotylo, deposit account number 50-1049.

Respectfully submitted,

January 3, 2007

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**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that this paper (and any accompanying paper(s)) is being facsimile transmitted to the United States Patent Office on the date shown below.

Michael P. Straub

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Michael P. Straub

Signature

January 3, 2007

Date